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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RIK M. SLAYMAN, Defendant and Appellant.	B169387 (Los Angeles County Super. Ct. No. KA 059528)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark G. Nelson, Judge. Affirmed.

David M. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Chung L. Mar and Tita Nguyen, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant claims the evidence was insufficient to sustain a robbery count and attendant weapon enhancement. In a related claim, he says his lawyer failed him by not attacking the weapon enhancement. We reject the allegations and affirm.

BACKGROUND

Defendant, of violent disposition, had carried on a relationship with "Cyndi" for several years. They had a small son and lived together in an apartment. Defendant was unemployed and stayed home with the child while Cyndi supported the family. Cyndi had the day after Thanksgiving off. In order to get away from defendant for a few hours and have some time to herself, she told him she had to go to work. Instead, she visited an uncle's grave and then went shopping. She had not been gone long before defendant began a series of calls to her cell phone. She did not answer and defendant left a series of angry, profane, and pejorative messages.

At least one of the messages related that defendant had left the child home alone. When Cyndi contacted defendant via his cell phone, he called her profane names and yelled that he had indeed left the child home alone. Cyndi arranged for her sister to meet her at the apartment complex and called 911. As Cyndi waited for her sister and the police, a security guard (Zhodi) came by. When the sister arrived, the three went to the apartment and found the child alone.

As Cyndi prepared to gather some personal effects so she could spend the night away, defendant returned. Screaming profanities, he "came charging" at her, threatened her, Zhodi, and her sister with a knife. He told Cyndi he was going to kill her. Zhodi tried to calm defendant, who responded by pulling what appeared to be a real pistol and telling Zhodi to stay out of it. Zhodi complied with defendant's demand for his radio and then fled. Defendant threatened to kill both Cyndi and her sister. He shoved the sister into Cyndi and both fell to the floor. Defendant made holes in the wall with the knife and continued to verbally and physically assault Cyndi. The sister took the child and hid in the parking lot.

Defendant forced Cyndi into their vehicle. Finding no keys, he forced her back to the apartment, where they found the keys. Defendant forced her back to the parking lot.

There, they encountered Zhodi. Defendant gave back the radio, then displayed the gun and demanded Zhodi's identification. Zhodi turned over his driver's license. Defendant also took from Zhodi a job-folder containing paperwork. While this was going on, Cyndi tried to flee, but fell. Defendant forced her back to the vehicle, while threatening to kill her, the child, and himself.

As defendant started to drive out of the apartment complex, a sheriff's patrol car blocked his escape. A female deputy arrested him. A search of the vehicle turned up Zhodi's license and work papers plus the knife and a toy gun that looked like a real firearm. The knife had drywall powder on it.

Defendant's testimony painted him as the victim of an abusive Cyndi. He explained away all damaging evidence.

The jury convicted defendant of robbery and making terrorist threats and found true weapon enhancements as to the counts. The panel acquitted defendant of child abuse and deadlocked on a kidnapping count and several assault counts. The trial court imposed a prison term of four years and eight months.

I

Defendant says the evidence was insufficient to sustain the robbery count. He says the evidence failed to show that defendant intended to permanently deprive Zhodi of either his driver's license or work papers. This allegation means we "must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Defendant testified that he merely asked to see Zhodi's identification to relieve himself of any anxiety as to who Zhodi was and why he persisted in hanging around during an argument between defendant and Cyndi. The jury was instructed on the specific intent required for robbery. Although the evidence swayed the jury to one acquittal and several no-decisions, the panel clearly rejected defendant's denial of criminal intent as to Zhodi and concluded he intended to keep at least the license.

When defendant demanded Zhodi's identification, Zhodi questioned why defendant needed it. Defendant replied that he wanted it so he could track down Zhodi in the event Zhodi decided to cooperate with police. ("He said I take your I.D. just in case if you call police or involve anything, I catch you, something like this, he said.") This evidence amply demonstrated that defendant intended to keep the license in order to so intimidate Zhodi. While the license may have had no monetary value to defendant, he valued it as a possible ticket to freedom from the potential consequences of his violent conduct.

Defendant's "intent was to be inferred from circumstances and was a question of fact for the jury to decide. [Citation.]" (*People v. DeLeon* (1982) 138 Cal.App.3d 602, 606.) We shall not interfere with the jury's determination.

Defendant relies on *Rodriguez v. Superior Court* (1984) 159 Cal.App.3d 821, to no avail. There, the defendant kidnapped a woman into his car. When she fought off his advances, he dragged her out of the car into a field, where he raped her and left her. Her purse remained in the car when he drove off after the assault. The appellate court, on a pretrial writ, concluded the evidence failed to show any intent toward the purse and ordered dismissal of the robbery count. Our case is different. While defendant Rodriguez probably had no idea the purse was in the car, defendant Slayman specifically demanded Zhodi's identification. Defendant Rodriguez was after something very different from the purse or its contents. Defendant Slayman wanted the driver's license for a specific purpose.

II

Defendant says the toy gun did not constitute a dangerous weapon and thus did not support the weapon enhancement on the robbery count. In so arguing, defendant relies on two Court of Appeal opinions that appear to have confused the distinction between deadly and dangerous weapons as articulated by the California Supreme Court. There is some dispute about whether the toy gun was plastic, respondent claiming there is no such evidence and defendant pointing to his own unrebutted testimony on the point. We will

assume the gun was plastic. In order to support the weapon enhancement, the gun had to qualify as either a deadly or dangerous weapon.

In *People v. Aranda* (1965) 63 Cal.2d 518, the court pointed out that the "words 'dangerous or deadly' are used disjunctively and are not equivalents. [Citations.]" (*Id*. at p. 532.) The court explained that the definition of deadly weapon "does not include a toy pistol unless the toy was made of metal and was 'used or intended to be used as a club.'" (*Id*. at p. 533.) The plastic toy gun did not so qualify. Even had it been a metal toy gun, the "deadly" enhancement would have failed since there was no evidence defendant used or intended to use it as a club.

The question becomes whether the toy qualified as a dangerous weapon. The *Aranda* court declared that "it is not necessary to show that the weapon is deadly so long as it can be shown that it is dangerous. . . . The prosecution does not have to prove . . . that it was real. [Citation.] *Any* pistol, even a short one, may be a 'dangerous' weapon . . . since it is capable of being used as a bludgeon. [Citation.] It is not necessary to show that defendant intended to use it. [Citation.]" *People v. Aranda*, *supra*, 63 Cal.2d at p. 532, italics added.) The jury can sustain the "dangerous" enhancement "if it determines from the circumstances that the toy gun *could* have been used as a club." (*Ibid*.) The *Aranda* court imposed no "metal" requirement on a "dangerous" toy gun.

The panels in *People v. Reid* (1982) 133 Cal.App.3d 354 and *People v. Godwin* (1996) 50 Cal.App.4th 1562 "misread and misstated *Aranda*." (*People v. Godwin*, *supra*, 50 Cal.App.4th at p. 1577 (conc. & dis. opn. of Woods, J.).) "By errantly combining separate discussions of disparate statutes, *Reid* [and *Godwin*] ascribe[] to *Aranda* a holding opposite to its actual holding." (*Id*. at p. 1578.) The *Reid* and *Godwin* panels failed to recognize *Aranda's* distinction between a "dangerous" and a "deadly" weapon and infused the "deadly" requirements of a metal toy gun and use or intent to use as a club into the definition of a "dangerous" weapon, thus unwittingly eliminating the distinction between the two.

In our case, the plastic toy gun clearly *could* have been used as a bludgeon. Defendant waved it around, threatening both Cyndi and Zhodi. He was in close

proximity to the victims and demonstrably meant to have his demands met. The jury was entitled to conclude that had Zhodi shown sufficient reluctance to cooperate, defendant could have resorted to clubbing him with the gun.

We reject any inference that plastic is too soft or light to be capable of inflicting significant injury.

III

Defendant says his counsel was ineffective 'in failing to argue that the toy gun was not a deadly or dangerous weapon and failing to object to the prosecutor's argument regarding deadly or dangerous weapons[.]" (All caps. omitted.) For all of the reasons stated in part II of this opinion, we reject the claim.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

MALLANO, J.